

UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: Bernd Schessl et al.
Application Number: 10/575,297
Filing Date: 04/11/2006
Group Art Unit: 3781
Examiner: Stephen J. Castellano
Title: CROCKERY BASKET COMPRISING HEIGHT-
ADJUSTABLE RACKS

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Commissioner for Patents
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APPEAL BRIEF

Pursuant to 37 CFR 1.192, Appellants hereby file an appeal brief in the above-identified application. This brief is being filed within one month of the Notice of Panel Decision from Pre-Appeal Brief Review dated October 20, 2010. The requisite fee set forth in 37 CFR 1.17(f) was paid on August 18, 2010.

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(1) REAL PARTY IN INTEREST

The real party in interest is BSH Bosch und Siemens Hausgeräte GmbH of Munich, Germany.

(2) RELATED APPEALS AND INTERFERENCES

There are no appeals or interferences that will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) STATUS OF CLAIMS

Claims 1 – 12 are cancelled. Claims 13-32 are pending in the present application, claims 25-30 are indicated as being allowable and claims 13-24, 31 and 32 have been finally rejected. The final rejections of claims 13-24, 31 and 32 are being appealed. Claims 13, 25, 27 and 31 are independent.

(4) STATUS OF AMENDMENTS

No Amendments are outstanding.

(5) SUMMARY OF CLAIMED SUBJECT MATTER

A description of the subject matter recited in the pending claims that are argued separately is set forth below, along with an indication of the portions of the specification and drawings that provide support for these features.

13. A crockery basket (1; [0020]; Figures 1-2) comprising:
a framework (2, 7; Figure 1) for retaining items to be washed, the framework including a common edge (Figures 1 and 2 show the common edge to which rack 3 is attached);
at least one rack (3, [0020], Figures 1-3) for engaging items to be washed to support the retention of such items relative to the framework; and
a plurality of holding elements (5; [0021], Figures 1-2) for holding the at least one rack (3) at different height positions on the crockery basket ([0021]), the plurality of holding elements (5) being secured on the common edge along a single side of the framework, wherein said holding elements (5) remain secured to the framework when the rack is disengaged from the holding elements (5) and the rack is moved from one of the holding elements (5) to another of the holding elements to change the height position (H1, H2, H3; Figure 2; [0022]).

23. The crockery basket according to claim 13, wherein the at least one rack (3) has at least one mechanical stop (6; [0020]; Figure 1) with which the rack is supported on the crockery basket to hold the rack in a substantially horizontal position.

24. The crockery basket according to claim 14, wherein the at least one rack (3) has a fixing structure (4) that can be secured in a detachable manner or a non-detachable manner on the framework (2, 7) of the crockery basket (1) at different height positions (H1, H2, H3), and at least one of the first device (group of holding elements per claim 14) and the fixing structure (4) has at least one mechanical stop (16) for assisting the support of the rack (3) in a substantially horizontal position.

31. A crockery basket (1) comprising:
- a framework (2, 7) to retain items to be washed, the framework (2, 7) including a vertical wire (7);
 - at least one rack (3) to engage items to be washed to support the retention of such items relative to the framework (2, 7), said rack (3) including a pivot pin (9; [0022], [0023]; Figures 1, 2) about which the rack may be pivoted; and
 - at least one holding element (4, 5) to hold the at least one rack (3) at different height positions (H1, H2, H3) on the crockery basket (1), the at least one holding element (4, 5) being secured to the framework (2, 7), the at least one holding element (4, 5) including a pair of arms that straddle the vertical wire of the framework (see perspective of Figure 1 and Figure 3), each of said arms extending inside the framework (2, 7) and including a hook-shaped member to support the pivot pin (9; Figures 1-3).

32. The crockery basket according to claim 31, wherein the holding element (4, 5) remains secured to the framework (2, 7) as the rack (3) moves between the different height positions (H1, H2, H3) of the holding element (4, 5).

(6) GROUND OF REJECTION TO BE REVIEWED ON APPEAL

- A) Whether claim 32 is unpatentable under 35 U.S.C. § 112(first paragraph) as failing to comply with the enablement requirement.
- B) Whether claims 13-20 and 22-24 are unpatentable under 35 U.S.C. § 102(b) over Smith (U.S. Patent No. 5,480,035).
- C) Whether claim 21 is unpatentable under 35 U.S.C. § 103(a) over Smith.
- D) Whether claims 13-22 and 31 are unpatentable under 35 U.S.C. § 103(a) over Smith in view of Remmers (U.S. Patent No. 4,735,325) and Luukkonen (U.S. Patent No. 5,027,959).

(7) ARGUMENT

A) Claim 32 satisfies the requirements of 35 U.S.C. § 112.

Claim 32

Claim 32 recites that the holding element remains secured to the framework as the rack moves between different height positions of the holding element. According to the Examiner, the holding element 5 includes only one height position and is not capable of having multiple height positions. However, Applicants respectfully submit that the Examiner's position is inappropriate because claim 32 does not require the holding element to have multiple height positions. Rather, claim 32 specifies a rack 3 that can move between different height positions of the holding element 5. Additionally, the holding element 5 as shown in Figures 1 and 7 includes a number of pairs of arms that can support the rack 3 in multiple height positions. Moreover, claim 13 specifies holding elements for holding the rack at different height positions – which claim was not found objectionable.

The Examiner orally indicated that this rejection could be overcome by changing “holding elements” to --fixing elements--, but this change is not necessary to satisfy the requirements of 35 U.S.C. §112, first paragraph.

Appellants respectfully request reversal of this rejection.

B) Claims 13-20 and 22-24 are patentable under 35 U.S.C. § 102(b) over Smith (U.S. Patent No. 5,480,035).

Claim 13

Before addressing the Final Rejection, Applicants point out that on May 19, 2010 Applicants' representative conducted a telephonic interview with the Examiner to discuss this application. During the interview, the Examiner admitted that claim 13 was not anticipated in view of Smith. However, the Examiner took the position that claim 13 was obvious in view of the combination of Smith in view of Remmers and/or Luukkonen (discussed below). Also,

the Examiner indicated that claim 1 would be allowable over Smith/Remmers/Luukkonen if amended to include the subject matter of dependent claims 23 or 24.

Applicants decided not to accept the Examiner's proposal. In the Final Rejection, however, the Examiner has again maintained the anticipation rejection of claim 13 over Smith. In addition, the Examiner has withdrawn any indication that claims 23 and 24 would be allowable if placed into independent form.

Unfortunately, it appears to Applicants that the Examiner has withdrawn the previous indication of allowability simply because Applicants did not choose to accept that subject matter at that time. In the next Office Action, if not a Notice of Allowance, the Examiner is requested to reinstate the indication of allowable subject matter with respect to dependent claims 23 and 24, and to withdraw the rejection based on Smith.

Turning now to the specific errors in the Office Action, the following is submitted:

Claim 13 is directed toward a crockery basket comprising, *inter alia*, a framework, at least one rack for engaging items to be washed to support the retention of said items relative to the framework and a plurality of holding elements. The holding elements are secured on the common edge of the framework along a single side of the framework.

Smith does not teach or disclose this subject matter. As shown in Smith's Figure 1, the holding elements 17 are required to be positioned on opposite sides of the framework and in fact, could not work if they were secured on the common edge along a single side of the framework as set forth in claim 13.

Again, it is reiterated that the Examiner agreed that claim 13 distinguishes over Smith during a telephone conference on May 19, 2010. In addition, Applicants' recollection is that the Examiner agreed that claim 13 defines over Smith during an earlier telephone interview conducted on February 8, 2010.

Moreover, on page 5 of the Office Action, the Examiner states that "If it should be deemed that Smith fails to disclose that both holding elements are secured to a single side,

then Smith can be modified by Remmers and Luukkonen” – discussed below. This statement points to an obvious weakness in the Examiner’s position.

Claims 23 and 24

Claim 23 specifies that the at least one rack has at least one mechanical stop with which the rack is supported on the crockery basket to hold the rack in a substantially horizontal position. Smith (Figures 6 and 7) clearly shows its stop 56, 57 to be on the cap 22, not the rack as claimed. The Examiner does not specifically address the language of claim 23 in the Final Rejection, only lumping claim 23 in with the discussion of other claims, in contravention to 37 CFR §1.104(c)(2).

Claim 24 specifies the crockery basket according to claim 14, wherein the at least one rack has a fixing structure that can be secured in a detachable manner or a non-detachable manner on the framework of the crockery basket at different height positions, and at least one of the first device and the fixing structure has at least one mechanical stop for assisting the support of the rack in a substantially horizontal position. Smith does not teach a fixing structure secured on the framework of the crockery basket at different height positions, and nor has this part of claim 24 been addressed in the Final Rejection, contrary to 37 CFR §1.104(c)(2).

The Examiner indicated these claims to be allowable during the May 19, 2010 telephonic interview, as Smith does not teach this subject matter.

Appellants respectfully request reversal of this rejection.

D) Claim 21 is patentable under 35 U.S.C. § 103(a) over Smith

Claim 21 is patentable by virtue of its dependence on claim 14 (and 13), in combination with the further features recited therein.

Appellants respectfully request reversal of this rejection.

E) Claims 13-22 and 31 are patentable under 35 U.S.C. § 103(a) over Smith in view of Remmers (U.S. Patent No. 4,735,325) and Luukkonen (U.S. Patent No. 5,027,959).

Claims 13 and 31

Claim 13 is directed toward a crockery basket comprising, *inter alia*, a framework, at least one rack for engaging items to be washed to support the retention of said items relative to the framework and a plurality of holding elements. The holding elements are secured on the common edge of the framework along a single side of the framework.

Smith does not teach or disclose this subject matter. As shown in Smith's Figure 1, the holding elements 17 are required to be positioned on opposite sides of the framework and in fact, could not work if they were secured on the common edge along a single side of the framework as set forth in claim 13.

Moreover, on page 5 of the Office Action, the Examiner states that "If it should be deemed that Smith fails to disclose that both holding elements are secured to a single side, then Smith can be modified by Remmers and Luukkonen".

In regard to independent claims 13 and 31, the Examiner's position is that it would have been obvious to replace the plates 22 of Smith with the clips 40 of Remmers, or the fastening element 7 of Luukkonen, or a combination thereof, to provide a plurality of holding elements secured on the common edge along a single side (one wall) of the framework.

Applicants respectfully submit that all of these would be inappropriate combinations as there would be no support for the distal end of the Smith rack. In particular, element 57 of the Smith support 22 holds the rack in the horizontal position, whereas the Examiner's

position is to replace Smith's support (which includes horizontal holding element 57) with the clips 40 of Remmers and/or the fastening elements 7 of Luukkonen, which have no such horizontal support. In other words, the modified Smith rack would simply pivot down, unless it was placed so close to the bottom of the basket that it would be supported by the basket bottom. However, in that case, there would be no room to place items in the existing space between the basket bottom and the bottom surface of the rack.

Claim 31

The Examiner's position is that Remmers includes arms 50, 52 that straddle a vertical post, and that Luukkonen teaches similar arms that straddle vertical wires. First, it appears that the Examiner has engaged in impermissible "picking and choosing" of various features in the prior art, based on impermissible hindsight, to arrive at the claimed subject matter. There is simply no reason to modify Smith to support its rack on one side, as Smith teaches to dynamically or movably support a pivotable rack on its ends while Remmers/Luukkonen teach to statically support a shelf – thus, Smith and Remmers/Luukkonen are directed to mutually exclusive supports. Second, there is no reason only one of ordinary skill in the art would have picked Remmers' arms 50, 52 and also somehow combined them with Luukkonen's dissimilar arms, whereby Remmers' arms would somehow straddle the mesh element.

Third, claim 31 also specifies that the arms extend inside the framework and include hook-shaped members. The arms of Remmers and Luukkonen do not extend inside the framework and outwardly extending arms 50 and 52 of Remmers do not include the hook-shaped members.

Appellants respectfully request reversal of this rejection.

(8) CONCLUSION

In view of the foregoing discussion, Appellants respectfully request reversal of the Examiner's rejection.

Respectfully submitted,

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CLAIMS APPENDIX

1-12. (Cancelled)

13. (Rejected) A crockery basket comprising:

a framework for retaining items to be washed, the framework including a common edge;

at least one rack for engaging items to be washed to support the retention of such items relative to the framework; and

a plurality of holding elements for holding the at least one rack at different height positions on the crockery basket, the plurality of holding elements being secured on the common edge along a single side of the framework, wherein said holding elements remain secured to the framework when the rack is disengaged from the holding elements and the rack is moved from one of the holding elements to another of the holding elements to change the height position.

14. (Rejected) The crockery basket according to claim 13, wherein at least one group of the holding elements is configured as a first device in which the holding elements are arranged at predetermined positions relative to one another, and the first device is mountable on the crockery basket, such that the at least one rack can be arranged at different height positions.

15. (Rejected) The crockery basket according to claim 14, wherein the first device is detachably connectable to the crockery basket.

16. (Rejected) The crockery basket according to claim 14, wherein the first device is configured as a fixing ladder which has a number of said holding elements arranged substantially above one another at different height positions.

17. (Rejected) The crockery basket according to claim 14 further comprising a second group of the holding elements configured as a second device in which the holding elements of the second group are arranged at predetermined positions relative to one another and the second device is mountable on the crockery basket, such that the at least one rack can be arranged at different height positions, and the first device and the second device are configured as two fixing ladders for supporting the at least one rack at different height positions.

18. (Rejected) The crockery basket according to claim 14, wherein the framework of the crockery basket includes a plurality of substantially horizontal members arranged one above the other, on which at least one rack can be disposed at different height positions.

19. (Rejected) The crockery basket according to claim 18, wherein the at least one rack has a fixing structure that can be secured in a detachable manner or a non-detachable manner on the members of the framework of the crockery basket at different height positions.

20. (Rejected) The crockery basket according to claim 19, wherein at least one of the fixing structure on the rack and the holding elements are configured as clamping connections that can be secured in a detachable manner or a non-detachable manner on the framework of the crockery basket.

21. (Rejected) The crockery basket according to claim 14, wherein the at least one rack has a fixing structure that can be secured in a detachable manner or a non-detachable

manner on the framework of the crockery basket at different height positions, and at least one of the first device and the fixing structure is made of plastic.

22. (Rejected) The crockery basket according to claim 13, wherein the at least one rack is rotatably mounted in the respective holding elements with which it is engaged such that the rack can be pivoted between a substantially horizontal position and a substantially vertical position.

23. (Rejected) The crockery basket according to claim 13, wherein the at least one rack has at least one mechanical stop with which the rack is supported on the crockery basket to hold the rack in a substantially horizontal position.

24. (Rejected) The crockery basket according to claim 14, wherein the at least one rack has a fixing structure that can be secured in a detachable manner or a non-detachable manner on the framework of the crockery basket at different height positions, and at least one of the first device and the fixing structure has at least one mechanical stop for assisting the support of the rack in a substantially horizontal position.

25. (Allowed) A crockery basket comprising:
a framework to retain items to be washed;
at least one rack to engage items to be washed to support the retention of such items relative to the framework; and
a plurality of holding elements to hold the at least one rack at different height positions on the crockery basket,
wherein the framework includes at least one horizontal member and at least first and second vertical wires intersecting with the horizontal member along a single side of framework, and wherein a first one of the plurality of holding elements engages the

framework at a first intersection between the horizontal member and the first vertical wire along the single side, and a second one of the plurality of holding elements engages the framework at a second intersection between the horizontal member and the second vertical wire along the single side.

26. (Allowed) The crockery basket according to claim 25, wherein each of the holding elements includes first and second arm or leg portions extending on opposite sides of a respective one of the first and second vertical wires to support a pivot pin of the rack.

27. (Allowed) A crockery basket comprising:
a framework to retain items to be washed;
at least one rack having an upper surface to support the items relative to the framework, said rack having a pivot pin about which the rack is pivotable; and
a plurality of holding elements to hold the at least one rack at different height positions on the crockery basket,
wherein the at least one rack is pivotable about the pivot pin between generally horizontal and vertical positions, the rack including a supporting clip to form a mechanical stop abutable with a vertical wire of the framework when the rack is in the generally horizontal position.

28. (Allowed) The crockery basket according to claim 27, wherein the supporting clip is formed as an extension of and in one piece with the pivot pin.

29. (Allowed) The crockery basket according to claim 28, wherein the pivot pin and supporting clip are generally parallel to one another.

30. (Allowed) The crockery basket according to claim 28, wherein the pivot pin is generally parallel to a horizontal member to which the holding elements are secured.

31. (Rejected) A crockery basket comprising:
a framework to retain items to be washed, the framework including a vertical wire;
at least one rack to engage items to be washed to support the retention of such items relative to the framework, said rack including a pivot pin about which the rack may be pivoted; and
at least one holding element to hold the at least one rack at different height positions on the crockery basket, the at least one holding element being secured to the framework, the at least one holding element including a pair of arms that straddle the vertical wire of the framework, each of said arms extending inside the framework and including a hook-shaped member to support the pivot pin.

32. (Rejected) The crockery basket according to claim 31, wherein the holding element remains secured to the framework as the rack moves between the different height positions of the holding element.

EVIDENCE APPENDIX

None

RELATED APPEALS APPENDIX

None